

DISCUSSION/ACTION AGENDA ITEM .1

Date: July 2, 2008

From: City Manager, Steve Albright

Date: Friday, June 27, 2008

Item: **APPEAL OF PLANNING COMMISSION DECISION ON
MARSHALL PROJECT 2008/07**

Background: This Item was first scheduled for the City Council meeting held on June 25, 2008. The item was considered for Council consideration at this July 2, 2008, to accommodate the legal counsel's recommendation that the Council conduct a Closed Session to discuss potential litigation and then proceed with action on this appeal in the Special public meeting.

This proposed project is for the construction of a single-family home on a currently vacant lot on Edwards Street. The proposal has been reviewed by the Planning Commission during noticed public meetings, where considerable public input has been received. As a result, certain compromises to the construction of the structure, its placement on the lot, its size and height, and other community concerns have been made. As a result, the Planning Commission recommended approval of the project with numerous conditions (on a 3-2 vote) this past April, including the issuance of a Coastal Development Permit.

The Planning Commission's approval has been appealed by Mike and Hope Reinman, who own property adjacent to the proposed project site. Their appeal challenges the findings of the Planning Commission relative to consistency with the General Plan, the Zoning Ordinance, the Local Coastal Plan, the Coastal Act, and the Northcoast Regional Water Quality Control Board.

Staff Recommendation: The staff recommends that the Council concur with the findings of the Planning Commission and deny the appeal of the Commission's decision.

Attachments: A new four-page Staff Report and Recommendation summarizing the Planning Commission hearing and actions that led to a decision and the subsequent appeal to the City Council was presented with the June 25, 2008 Agenda packet. Another copy is attached.

Note: An extensive background information package of the information considered by the Planning Commission since December, 2007, was provided to the City Council members in June.

STAFF REPORT: MARSHALL 2007-12 APPEAL

JUNE 25, 2008

SUMMARY OF THE PROJECT & IMPORTANT ISSUES

Project Applicant: Jim Marshall

Agent: Mike Pigg

Project Status: Conditionally approved by the Planning Commission by a 3-2 vote. The Planning Commission approved the following motion: *“Based on information submitted in the application, and included in the staff report and public testimony, I move to adopt the findings in this staff report and approved the project as conditioned [in the staff report].”* Please see the April staff report for the findings and final list of conditions.

Appellant: Mike and Hope Reinman

Basis for Appeal: *“Based on the application materials and previous public comment, the proposed project is not consistent with the City’s General Plan, Zoning Ordinance, Local Coastal Plan, the Coastal Act, and the Northcoast Regional [Water] Quality [Control Board] Basin Plan, and ignores recommendations and findings of the Tsurai Study Area report. Also, the planning commission appears to be in violation of government code section 8920 in regards to ethical conduct.”*

Staff Response to Appeal: The staff reports and supporting materials provide a detailed analysis of the project in terms of all the regulations and documents listed as applicable. The project was found to be in compliance by staff and a majority of the Planning Commission. The ethical issue (a Conflict of Interest challenge) has been addressed by the City Attorney and has been found not to be applicable to this situation.

Coastal Commission Appeal Status: The project site is shown to be outside the area that is appealable to the Coastal Commission as mapped in the City’s certified LCP due to the fact that Edwards Street, a public road, is located between the project and the sea. However, current Coastal Act provisions (§30603) allow appeals for projects within 300 feet of a bluff. Therefore, the Coastal Commission would accept an appeal of an approval or conditional approval (denial of the appeal). However, a denial of the project, upholding the appeal, would not be appealable. Only major public works projects or major energy facilities can be appealed if denied by a local agency.

CEQA Status: Categorically exempt from CEQA per §15303(a) of the CEQA Guidelines exempting construction of a single-family residence in a residential zone. No substantial evidence has been submitted that this project falls under an exception to the exemptions under §15300.2 due to unusual circumstances including its proximity to the Tsurai Study Area. See ‘Staff Response to CEQA Concerns’ on age 60 of your background materials.

Zoning: Urban Residential – Single-family dwellings are a principally permitted use. Principally permitted uses are allowed by right, and normally do not require City approvals other than a building permit if it meets zoning requirements. In Trinidad, Design Review is always required. These requirements are discussed in more detail in the April staff report pages 3-7.

Issue	Zoning Requirement	Proposed Project
Lot Size	Minimum 8,000 sq. ft. (SF) (although smaller lots that were legally created are generally developable)	12,815 SF (after merger of two legal lots, which has been approved)
Setbacks	Front: 20 ft. Side: 5 ft. Street Side: 15 ft. Rear: 15 ft.	Front (Hector): 58 ft. Front side (west): 5 ft. Side (north): 7 ft. Street side (south): 50 ft. Rear (east): 15.5 ft.
Density	1 unit per 8,000 SF	1 unit on 12,815 SF
Height	Maximum: 25 ft. Minimum: 15 ft.	Maximum: 16 ft. (measured from ave. ground elev.)
Size	Maximum (guideline): 2,000 SF Minimum: 1,500 SF Floor to lot area ratio (FAR) (PC guideline) 25% Average house size approved in the last 10 years: 2,251 SF Average FAR: 25.2%	House size: 2,454 SF FAR: 19%
Parking	2 spaces in addition to garage	5 spaces in addition to garage

Special Concerns:

The following is a brief description of the primary concerns highlighted during the Planning Commission hearings, all of which were satisfactorily addressed to those Commissioners approving the project.

Historic Resources

General Plan Policy 76 – “*The design assistance committee should ensure that any proposed development does not detract from these [Holy Trinity Church, Memorial Lighthouse, Tsurai Village, Trinidad Cemetery] historical sites and structures.*” The Zoning Ordinance implements this policy through View Protection finding E for projects within 100 ft. of these sites. Although the project property is within 100 ft. of these sites, the house itself will be at or more than 100 ft. from them. This issue is discussed further on page 6 of the April staff report.

Grading and Drainage

A separate grading permit in accordance with the City’s Grading Ordinance (Chapter 15.16) will be required to be approved by the City Engineer and Planning Commission prior to project construction. Drainage impacts on the bluff have been minimized by requiring all hardscape (roof and driveway) drainage to be tied into the City’s existing storm system, directing it away from the bluff and resulting in a net decrease in water infiltrating near the bluff. These issues are discussed in more detail on page 6 and 7 of the April staff report.

Slope Stability / Geologic Report

A geologic report was prepared for this project in accordance with Zoning Ordinance §17.32.090 and §17.20.130. The report met the requirements of the City's certified LCP and the Planning Commission made the five required findings listed on page 7 of the April staff report. The overall conclusion of the report was that: *"Based on geologic hazard investigations conducted for the proposed development area, aerial photograph analysis and a literature review of a selected few geotechnical reports for sites within the vicinity of the project area, it is PWA's [Pacific Watershed Associates] opinion that construction of a single-family residence on the site will present no added instability to the site itself, or its surrounding area, provided recommendations in this report are adhered to."* All the recommendations were included as conditions of the project approval. Please see page 7 of the April staff report for additional information.

Sewage Disposal

The project proposal includes a design for a new 3-bedroom septic system that meets all the current requirements of the Humboldt County Health Department and the Regional Water Quality Control Board Basin Plan. The Health Department may grant a reduced setback from the retaining wall for the system due to the shape of the lot, but this is fairly common. An approved permit is required prior to construction as a condition of project approval. Also see page 7 of the April staff report for more details.

Design Review and View Protection Findings

The majority of the Planning Commission agreed that all the necessary findings could be made. The main concern was for the size of the project in relation to the nearby historic sites and structures listed above. Other reasons for dissent included environmental concerns and lack of neighborhood support. The findings and responses can be found on pages 8-11 of the April staff report.

Conditions

Fifteen conditions were placed on this project in order to minimize impacts, respond to public comments and comply with all City regulations. These conditions are listed on pages 13 – 16 of the April staff report.

City Council Action:

There are four possible actions that the City Council may take, and these are described below along with sample motions below.

Motion for Denial of the Project, upholding the Appeal

If the Council does not agree with staff's and the Planning Commission's analysis, or if the public presents evidence that conflicts with the findings contained in the April staff report, the Council may choose to uphold the appeal and deny the project. Such a decision should be based on the project not meeting Zoning and / or General Plan requirements and / or one or more of the required findings not being able to be made.

Based on public testimony and information included in the application and staff report, I find that the project is inconsistent with the City's Zoning Ordinance and General Plan because --- and / or Design Review / View Protection Finding(s) "-----" can not be made because -----, and I move to uphold the appeal and deny the project.

Motion for Continuance

Based on the above analysis, and as conditioned below, the proposed project can be found to be consistent with the City's General Plan and Zoning Ordinance. However, due to public comment on view blockage and design, the City Council may consider continuing the project to allow the applicant to incorporate public and City Council input. The proposed motion might be similar to:

Based on the information submitted in the application, and included in the staff report and public testimony, I move to continue the project to the first / second regularly scheduled (month) meeting and request that public input and City Council comments be incorporated into an alternative design.

Motion for Denial of the Appeal and Approval of the Project – Staff Recommendation

Based on the application materials and previous public comment, the proposed project can be found to be consistent with the City's General Plan and Zoning Ordinance. Therefore, staff recommends that the City Council deny the appeal and approve the project. If the City Council agrees with the findings in the staff report, the proposed motion might be similar to the following:

Based on the information submitted in the application, and included in the staff report and public testimony, I move to adopt the information and findings in the April staff report and approve the project as conditioned in the April staff report:

Alternative Denial of the Appeal and Approval of the Project with Additional Conditions

The City Council also has the option of denying the appeal and approving the project with additional conditions to address any concerns brought up at the hearing. The motion would be similar to the above, but with the additional conditions included.

Conclusion and Staff Recommendation:

The staff recommends that the Trinidad City Council support the decision of the Planning Commission and approve the proposed project, including the conditions that were with the Planning Commission's approval on April 16, 2008.

Steve Albright, City Manager